

THE EPA'S TECH DIVIDE

Does the Clean Air Act require the agency to consider the most low-emission coal plant technologies in permitting new plants?

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In December 2005, the United States Environmental Protection Agency (EPA) announced that an applicant seeking a permit to construct a supercritical pulverized coal (SCPC) electricity generating facility in an attainment area need not consider integrated gasification combined-cycle (IGCC) technology under a Clean Air Act (CAA) analysis of best available control technology (BACT).

The EPA's determination is important in several respects. First, its conclusion diverges from determinations by several states that, under either federal or state clean air provisions, IGCC must be considered in a BACT analysis for an SCPC power plant. Other states continue to consider the issue, and the EPA's determination arguably dissuades these states from considering IGCC.

Moreover, the EPA's announcement is particularly significant in light of the need to replace aging plants and create new energy generation capacity.¹ As these companies seek permits to construct their new plants, they are likely to find increased support—on grounds of cost and reliability of established technology—for their contentions that they should be permitted to pursue projects that do not use IGCC.

At the same time, the promise of IGCC to enable sequestration of carbon dioxide, a greenhouse gas, strongly motivates environmental advocates to move IGCC technology forward during this limited window of opportunity.

The EPA's Position

In a Dec. 13, 2005, letter, Stephen Page, director of the EPA's Office of Air Quality, Planning, and Standards, responded to a request by a Colorado energy consultant for the EPA's position on whether a BACT analysis for proposed coal-fired power plants must include an evaluation of IGCC.² According to the EPA, Congress intended to distinguish between "production processes and methods, systems, and techniques" potentially applicable to a facility from those "alternatives" to the proposal that "would wholly replace the proposed facility with a different type of facility."³

The EPA determined that IGCC would redefine the basic design of an SCPC for the following reasons: (1) aspects of the IGCC technology are similar to designs previously deemed redefinitions of SCPC facilities; (2) the turbine and heat recovery system in an IGCC facility is akin to that found in a natural-gas plant rather

than a traditional SCPC facility; (3) IGCC is more like technology used in refining and chemical manufacturing processes rather than power generation plants (*i.e.*, controlled chemical reaction rather than true combustion); and (4) the IGCC technology would require different expertise on the part of the permit applicant as compared with the knowledge required for an SCPC unit.⁴ Thus, in determining that IGCC technology would redefine a proposed SCPC project, the EPA surmised that Congress did not intend to require consideration of IGCC in a BACT analysis.

The EPA did, however, note in its letter that, under Section 165(a)(2), the permitting authority must allow an “opportunity for interested persons ... to appear and submit written or oral presentations on the air quality impact of such source, alternatives thereto, control technology requirements, and other appropriate considerations.”⁵

The EPA previously had not drawn this distinction between analysis of alternatives to a source under Section 165(a)(2) and BACT, and has not promulgated policy or guidance giving content to the alternatives analysis.⁶ In a March 7, 2006, brief to the EPA Environmental Appeals Board, however, the EPA has for the first time addressed what it envisions such “alternatives” consideration requires.⁷ In the *Prairie State Generation* case, the EPA was asked by the board to address whether the Illinois EPA, in considering a permit for a new coal-fired plant, was required to consider low-sulfur coal and other alternatives to the proposed source. The EPA, consistent with its IGCC letter, maintained that the “proposed facility” referenced in section 165(a)(4) refers to the specific facility proposed by the applicant, which has certain design characteristics, and not some other facility that is fundamentally different. EPA pointed to its historical approach in which it has found that “the BACT review should not be used to frustrate an applicant’s ability to construct a particular type of facility in order to meet objectives that may be independent of environmental protection.”⁸ The EPA argued that requiring *Prairie State* to fire low-sulfur coal fundamentally would redesign the scope of the project, where the facility was planned and sited to burn fuel from a mine close to the plant.

The EPA went on, however, in its *Prairie State* brief to interpret section 165(a)(2), for what appears to be the first time, to require the permitting authority “to provide a reasoned response to comments identifying alternatives to the proposed source and raising other appropriate considerations.”⁹ The EPA noted that the statute requires a public hearing and an opportunity to comment on alternatives and other appropriate considerations, and concluded that the requirement to respond to such comments is “inherent” in the requirement to provide an opportunity to make the comments.

Although this might suggest an opening to require a reasoned consideration of IGCC, the EPA also appeared to have an eye on that issue in its *Prairie State* brief, limiting the scope of the requirement in two important respects. First, the EPA explained that the permitting authority has discretion to modify the PSD permit based on comments raising alternatives or other appropriate considerations, “but this is a highly discretionary matter,” suggesting that the permitting authority’s obligation is satisfied by a “reasoned explanation for why it has elected not to exercise its discretion.”¹⁰ Second, the EPA noted that the permitting authority was “not obligated to respond to comments addressing matters outside the scope of the [Clean Air] Act, such as the need for a particular facility.”¹¹ This comment would appear also to encompass the EPA’s current position that greenhouse gas emissions are outside the scope of the Clean Air Act.¹²

A Mixed-State Approach

A number of states also have considered whether IGCC is required as part of BACT, and some have taken a contrary view. Texas has followed EPA’s approach after EPA’s issuance of its recent interpretation. Many states have on the books laws precluding the imposition of requirements more stringent than those imposed by the EPA. In such states, the EPA decision could have particular significance and impact.

In Illinois, as part of its efforts to reduce mercury emissions from coal-fired power plants, the Illinois EPA requires plant applicants to evaluate the use of IGCC as part of a BACT analysis.¹³ These efforts arose out of concerns that “federal mercury legislation does too little, too late and in Illinois could actually lead to increased mercury emissions.”¹⁴ In June 2005, Illinois Gov. Rod Blagojevich bolstered the state’s IGCC program by signing Senate Bill 90, which permits gas utilities to enter into long-term supply contracts with any plant that uses IGCC to produce natural gas from Illinois coal.¹⁵ Moreover, Senate Bill 90 sets the price for IGCC-produced gas 18 to 30 percent lower than that of conventional natural gas.¹⁶ The legislation was intended to provide incentives for the purchase of IGCC-generated energy and to facilitate financing for the development of IGCC facilities.

Like Illinois, Montana requires coal-fired power-plant applicants to evaluate the use of IGCC as part of meeting the state’s “top-down” BACT demonstration.¹⁷ In describing its adoption of this approach, the Montana Department of Environmental Quality (Montana DEQ) noted that “using the BACT requirement as a means to redefine the design of the source when considering available control alternatives is an aspect of the permitting process in which the [Montana DEQ] has the discretion to engage in a broader analysis.”¹⁸ The Mon-

tana DEQ elaborated that “under an applicant’s proposal for a coal-fired electrical power generating plant, the [Montana DEQ] considers any process beginning with coal as a fuel and ending with the production of electricity to be appropriate for consideration under the top-down BACT analysis process. This analysis would include IGCC, [circulating fluidized bed, and] pulverized coal-fired boiler.”¹⁹

But unlike Illinois and Montana, Wisconsin has determined that consideration of IGCC is not required as part of a BACT analysis.

In February 2005, a Wisconsin administrative law judge affirmed the decision by the Wisconsin Department of Natural Resources (DNR) to issue a permit to the Wisconsin Electric Power Co. to construct the Elm Road Generating Station, to consist of two SCPC units and one IGCC unit.²⁰ In so ruling, Judge Coleman rejected environmental groups’ claims that the Wisconsin DNR erred in excluding IGCC from its BACT analysis of the proposed plant.²¹ Instead, Judge Coleman concluded that, based on the EPA’s New Source Review Manual,²² the design of the proposed station would be redefined if IGCC units were substituted for the SCPC units and, therefore, could not be required as part of BACT.²³ Judge Coleman noted that the only commonality between IGCC and SCPC units is that both types of units would use coal as the fuel stock;²⁴ beyond this feature, there are “innate difference[s]” in the processes, components, and regulatory treatment, and these differences “support the conclusion that IGCC and SCPC are different process technologies, and that to substitute one for the other would redefine the design of the source.”²⁵

Down the Middle

Recent developments in Texas suggest that there may be a middle-ground approach to the IGCC issue. On Dec. 5, 2005, CPS Energy and several environmental groups reached a settlement over the construction of a coal-fired plant near San Antonio.²⁶ As part of the settlement, the environmental groups agreed to drop their opposition to the plant’s permitting, while CPS agreed to make certain enhancements to its energy-conservation and renewable energy programs and to fund an engineering study on the use of IGCC.²⁷ CPS was not required to adopt IGCC to move forward with the plant.²⁸

On Dec. 15, 2005, shortly after the settlement was announced and just two days after EPA’s issuance of its Page letter interpretation, the Texas Commission on Environmental Quality announced that IGCC is not required as part of a BACT analysis.²⁹ Despite this determination, the CPS settlement indicates that there may be an intermediate approach the issue, at least until IGCC is more broadly tested and proven.

Other states such as New Mexico preclude state agencies

from promulgating air pollution regulations more stringent than the CAA, providing that any such regulations must be “no more stringent than but at least as stringent as required” by the CAA.³⁰ Ohio has enacted a similar restriction, permitting its agency to promulgate rules for the purpose of implementing the CAA provided any such rules “are consistent with, and no more stringent than, the requirements” of the CAA.³¹ South Dakota imposes a similar restriction, even extending the statute to limit promulgation of rules relating to other forms of pollution such as water.³² Oklahoma,³³ Rhode Island,³⁴ Missouri,³⁵ West Virginia,³⁶ and Pennsylvania³⁷ permit more stringent state regulations only if the state agency meets specific criteria or follows certain procedures. The significance of the EPA’s decision is particularly acute in these states, as their existing regulations are likely effectively to foreclose consideration of IGCC as a requirement of BACT, at least as long as EPA’s Page letter interpretation survives legal challenge.

The Legal Challenge to the EPA’s Decision

An array of environmental groups—including the Natural Resources Defense Council, the Sierra Club, the American Lung Association’s Chicago Chapter, Ohio Environmental Council Valley Watch, the Environmental Defense, and the Montana Environmental Information Center—have filed suits in the Court of Appeals for the District of Columbia challenging the EPA letter on both substantive and procedural grounds.³⁸ The arguments are foreshadowed in a letter to EPA urging withdrawal of the Page letter.³⁹

Specifically, the environmental groups allege that the EPA decision constitutes a new interpretation of the law and a change in EPA rules and prior interpretations promulgated without notice and opportunity for public comment, in violation of requirements set forth in the CAA.⁴⁰ In addition, they argue that the EPA interpretation conflicts with the text and legislative history of the CAA, as well as prior agency rulemakings and adjudicatory decisions.⁴¹

The environmental advocates point, in particular, to legislative history for the 1977 Amendments to the Clean Air Act, regarding the definition of BACT. They argue that, in defining BACT during the course of the 1977 Amendments to the CAA, Congress specifically included the term “innovative fuel combustion techniques”⁴² in Section 169(3) to “leave no doubt” that BACT included all production methods—including IGCC.⁴³ They point in particular to a statement from Sen. Walter Huddleston, who cautioned that without this clarification, “the possibility of misinterpretation would remain.”⁴⁴ In addition, they argue that the Senate’s report on the 1977 amendments reflects Congress’ broad view of state permitting agencies’ authority in evaluating BACT,⁴⁵ noting that “when

PRIMER ON THE CLEAN AIR ACT

An explanation of the statutory framework.

The CAA establishes a “cooperative federalism” framework for controlling air pollution.¹ The essential features of this program are: (1) the set of national ambient air-quality standards (NAAQS) established by the EPA; and (2) adoption by the states, with approval by the EPA, of state implementation plans for meeting the NAAQS.²

The 1977 amendments to the CAA codified a policy of prevention of significant deterioration (PSD), whereby areas that have attained NAAQS are required to maintain their level of air quality.^{3,4} For construction in a PSD area, a new plant (or an existing plant wishing to make a major modification or addition) is required to obtain a pre-construction permit that involves a review to determine BACT that is required for installation to control air pollutants.⁵ Section 169(3) of the CAA defines BACT as “an emission limitation based on the maximum degree of reduction ... which the permitting authority ... determines is achievable for such facility through application of production processes and available methods, systems, and techniques, including fuel cleaning,

clean fuels, or treatment or innovative fuel combustion techniques for control of each such pollutant.”⁶

The EPA’s objectives with respect to the PSD program arguably have shifted since its inception. The program itself arose largely out of both concerns related to visibility protection (particularly in national parks and wilderness areas)⁷ and economic considerations. At the time, environmentalists were particularly concerned that development in areas that were meeting health-based ambient air-quality standards would lead to air-quality degradation, especially with regard to aesthetic vistas that could be eroded long before clean air areas might exceed the NAAQS and encounter health impacts.

These environmental advocates joined forces with economic forces in more developed urban areas, who were primarily concerned that omitting new development in the clean air areas from stringent emissions controls would create a steeply “uneven playing field” that would encourage business to relocate and take jobs away from the nonattainment areas facing

stringent control requirements for existing facilities to address existing health impacts in the urban areas. Congress anticipated that requiring the existing facilities to “retrofit modern control technology into existing-facility designs would impose crippling costs”;⁸ however, Congress also was aware that “exclusion of existing sources from emissions-control requirements would create an incentive to retain existing stock rather than building new facilities.”⁹

The PSD program grew out of this tension between new and existing sources and clean air versus urban areas, on the belief the program would “lead to the rapid adoption of improvements in technology as new sources are built”¹⁰ and would level the playing field across the country with regard to economic development. In the 1990s, the focus of the program shifted to health issues based on increased recognition of the potential for facilities, particularly coal-burning power plants located in clean-air areas.¹¹ Today, environmental advocates are suggesting that the PSD program also should be employed as a tool to require technology, such as

IGCC, to control mercury emissions as well as greenhouse-gas emissions to fight global climate change.¹² —JM, JB, and KS

Endnotes

1. See *Connecticut v. EPA*, 696 F.2d 147, 151 (2d Cir. 1982).
2. See generally 42 U.S.C. §§ 7408-09 (2000); see also Gregory B. Foote, “Considering Alternatives: The Case for Limiting CO₂ Emissions From New Power Plants Through New Source Review,” 34 *Env’tl. L. Rep.* (Env’tl. Law Inst.) 10,642, 10,644 (2004), available at http://www.ciel.org/Publications/CO2_Foote_11May04.pdf (last visited Mar. 15, 2006).
3. *Act to Amend the Clean Air Act*, Pub. L. No. 95-95, 91 Stat. 685 (1977).
4. Areas that have not achieved the NAAQS follow the nonattainment area new source review requirements, which are designed to assist the states in meeting the NAAQS. See 42 U.S.C. § 7502.
5. 42 U.S.C. § 7475(a)(4).
6. *Id.* § 7479(3).
7. See, e.g., George Cameron Coggins & Robert L. Glicksman, 2 *Pub. Nat. Resources L.* § 11:19 (2006).
8. Jonathan S. Martel, “‘New Source’ Scrutiny,” *Nat’l L. J.*, Aug. 23, 1999, at B6.
9. *Id.*
10. *Id.*
11. See, e.g., Jonathan Martel, Janet Kester & Elliott Zenick, “Power Plants, Particulates, and the Uncertain Science of Public Health,” 18 *Nat. Resources & Env’t* 31, 32 (2004).
12. See, e.g., Foote, *supra* note 3, at 10,648.

an analysis of energy, economics, or environmental considerations indicates that the impact of a major facility could alter the character of the community, then the state could, after considering those impacts, reject the application.”⁴⁶

The EPA interpretation will be fought out in the Court of Appeals for the D.C. Circuit, where litigation also could be decided on administrative law grounds. Meanwhile, state approaches will continue to evolve and, especially if the D.C. Circuit does not reach the substantive issue, face challenges of their own in front of state agencies, the Environmental Appeals

Board, and the courts.

EPA’s Decision: Implications to Global Warming

The EPA’s determination also raises important policy questions in light of the current energy and environmental backdrop and at a time in which environmental advocates generally mistrust the EPA’s policy judgments. New capacity is needed to replace aging plants and respond to growing demand at a time when the United States’ greenhouse-gas emissions continue to rise. Emissions from existing plants account for one-

third of total United States production of greenhouse gases, and actual emissions are expected to increase 30 percent in the next 20 years.⁴⁷ Unlike the older processes, IGCC can be configured in a way that can separately capture carbon dioxide emissions at a reasonable cost, making it possible to store nearly all of the carbon dioxide emissions in geologic formations in coming years.⁴⁸

Some environmental groups have argued that if the EPA decision to exclude IGCC from BACT analysis for coal-fired power plants stands, it could hinder progress toward the environmental goal of reducing the emissions of greenhouse gases and other pollutants. In particular, they emphasize the technology-forcing objectives of the CAA and the established BACT process, and express concern that eliminating IGCC from consideration as BACT will remove the strong regulatory push toward this innovative technology, leaving proponents of the technology greater hurdles to garner interest and investment.

Indeed, even beyond coal-fired power plants, they are concerned that the EPA decision could have the ripple effect of impeding development of innovative technologies in other areas, such as refining, manufacturing, and other types energy generation plants. There are, however, substantial arguments that the distinction EPA has drawn is rational and appropriate. In particular, add-on emissions control technologies such as scrubbers and selective catalytic reduction (SCR) for conventional pulverized coal power plants are installed only to control emissions, as they have no other purpose. For such technologies, a regulatory push may be essential to ensure adoption, especially of the latest, most effective, and most expensive options as they become available.

In contrast, alternative designs such as IGCC, like alternative fuels—whether natural gas or lower sulfur coal—go well beyond consideration of emissions. These alternatives, after all, affect choices that might not be limited to emissions control, since they relate to equipment, processes, operating considerations and even plant-siting choices beyond whether to install add-on emissions-control technology.

Meanwhile, the ongoing legal challenges, coupled with the divergence in approach between the EPA and certain states, create a legal ambiguity that could affect development of IGCC as well as processes for approval and development of plants needed to meet growing energy demand. Unless Congress intervenes through enactment of clarifying legislation, the state and federal legal landscape surrounding the approval of new coal-fired power plants may remain murky and unsettled for

For certain emissions-control technologies, a regulatory push may be essential to ensure adoption, especially of the latest, most effective, and most expensive options as they become available.

the foreseeable future, as the federal cases proceed and as the states continue to experiment with, and refine, their own policies. The course of the debate could have a substantial effect not only on the future of IGCC but also on the interface between energy policy and environmental policy. ■

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Endnotes

1. See U.S. Department of Energy, Office of Integrated Analysis and Forecasting, *Annual Energy Outlook 2006 – With Projections to 2030* at p. 98 (2006), available at [http://www.eia.doe.gov/oiaf/aeo/pdf/0383\(2006\).pdf](http://www.eia.doe.gov/oiaf/aeo/pdf/0383(2006).pdf) (last visited Mar. 10, 2006) [hereinafter *Energy Outlook 2006*].
2. Letter from Stephen D. Page, Director, EPA Office of Air Quality, Planning and Standards, to Paul Plath, Senior Partner, E3 Consulting, LLC 1 (Dec. 13, 2005) (on file with authors) [hereinafter “Page Letter”].
3. *Id.* at 2.
4. *Id.*
5. Page Letter, *supra* note 14, at 1 (emphasis in EPA letter, added to statutory text).
6. NSR Workshop Manual, *supra* note 16 (drawing no distinction between the alternatives analysis and analysis).
7. In *re* *Prairie State Generation Co.*, PSD Appeal No. 05-05 (EPA Brief filed March 7, 2006) [hereinafter “Prairie State Br.”].
8. *Id.* at 6.
9. *Prairie State Br.*, *supra* note 20, at 15.
10. *Prairie State Br.*, *supra* note 20, at 15.
11. *Id.*
12. See, e.g., Memorandum from Robert E. Fabricant, General Counsel, EPA, to Marianne L. Horinko, Acting Administrator, EPA 1 (Aug. 28, 2003) available at http://www.epa.gov/airlinks/co2_general_counsel_opinion.pdf (last visited Mar. 15, 2006).
13. See Renee Cipriano, Director, Illinois EPA, *Director's Viewpoint, Mercury Reduction Is a Priority*, available at <http://www.epa.state.il.us/environmental-progress/v29/n1/directors-viewpoint.html> (last visited Mar. 15, 2006).
14. See *id.*
15. See Press Release, Office of State of Illinois Governor Rod Blagojevich, “Gov. Blagojevich Continues to Develop New Markets for Clean-Burning Illinois Coal and the Creation of New Jobs Across the

- State" (June 21, 2005), available at <http://www.illinois.gov/PressReleases/ShowPressRelease.cfm?SubjectID=3&RecNum=4077> (last visited Mar. 15, 2006).
16. See *id.*; see also 220 Ill. Comp. Stat. 5/9-220(h) (2006).
 17. See Montana Dep't of Environmental Quality, Montana Top-Down Best Available Control Technology (BACT) Analysis Process And Procedures Manual 8 (2004), available at http://deq.mt.gov/ber/2004_Agendas/2004JANUARY/MT_BACT_Manual_Final_Draft_12-17-03.pdf (last visited Mar. 15, 2006).
 18. See *id.* at 8.
 19. See *id.*
 20. Findings of Fact, Conclusions of Law & Order 4-5, In *re Air Pollution Control Constr. Permit Issued to Wis. Elec. Power Co.*, Case No. IH-04-03 (Wis. Div. of Hr'gs & App. Feb. 3, 2005).
 21. *Id.* at 4.
 22. EPA, *Draft New Source Review Manual* (1990), available at <http://www.epa.gov/nsr/publications.html> (last visited Mar. 15, 2006).
 23. *Id.* at 10-11.
 24. *Id.* at 11.
 25. *Id.* at 11-12.
 26. Press Release, The Alamo Group of the Sierra Club, "CPS Energy Completes Plant's Deal with Environmentalists" (Dec. 5, 2005), available at http://texas.sierraclub.org/alamo/_sgt/m3m1_1.htm (last visited Mar. 15, 2006).
 27. *Id.*
 28. *Id.*
 29. See "EPA Says New Coal Plants Don't Need IGCC To Meet Air Standards," *EnergyWash. Week*, Dec. 21, 2005. The Commission's conclusion arose out of its determination of whether an administrative panel hearing a dispute over a proposal to build a pulverized coal power plant in Riesel, Texas improperly excluded from consideration information related to IGCC.
 30. N.M. Stat. § 72-4-5C(1)(a) (2005).
 31. Ohio Rev. Code Ann. § 3704.036(B) (West 2006).
 32. S.D. Codified Laws § 1-40-4.1 (2005).
 33. Okla. Stat. tit. 27A, § 2-5-114(A)(2) (2005) (The state agency "may promulgate, pursuant to recommendation by the council, rules which establish emission limitations for hazardous air pollutants which are more stringent than the applicable federal standards, upon a determination by the Council that more stringent standards are necessary to protect the public health or the environment.").
 34. R.I. Gen. Laws § 23-23-5(12) (2005) (The state agency "may regulate the emission characteristics of all fuels used by stationary and mobile sources of air contaminants, provided the specific control technology and emission characteristics of fuels shall not be more stringent than the [federal standards], unless it can be shown that the control technology and emission characteristics of fuels are needed for the attainment or maintenance of air quality standards.").
 35. Mo. Ann. Stat. § 643.055(1) (West 2005) (requiring specific findings of fact by the state's air conservation agency for the promulgation of standards stricter than those imposed by the CAA).
 36. W. Va. Code § 22-5-4(a)(4) (2006) ("[N]o legislative rule or program of the [state] director hereafter adopted shall be any more stringent than any federal rule or program except to the limited extent that the director first makes a specific written finding for any such departure that there exists scientifically supportable evidence for such rule or program reflecting factors unique to West Virginia or some area thereof.").
 37. 35 Pa. Cons. Stat. Ann. § 4006.6 (providing that the state may not impose regulations more stringent than those in the CAA unless such

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standards are "needed to protect public health, welfare and the environment from emissions of hazardous air pollutants from new and existing sources").

38. *Natural Resources Defense Council v. EPA*, case no. 06-1059, *Environmental Defense Inc. v. EPA*, case no. 06-1062, and *American Lung Association v. EPA*, case no. 06-1062, were recently consolidated on the court's own motion.
39. Letter from American Lung Association of Metropolitan Chicago, *et al.* to Stephen L. Johnson, Administrator, U.S. Environmental Protection Agency (Feb. 8, 2006) (on file with authors).
40. See 42 U.S.C. §§ 7471 & 7607(d).
41. Letter from American Lung Association of Metropolitan Chicago, *supra* note 41.
42. 42 U.S.C. § 7479(3).
43. 123 Cong. Rec. 18,458, 18,472 (June 10, 1977); see also Foote, *supra* note 3, at 10,647.
44. 123 Cong. Rec. at 18,472.
45. See Foote, *supra* note 3, at 10,647.
46. S. Rep. No. 95-127, at 31 (1977).
47. See Center for International Environmental Law, "CIEL Attorney Publishes Article Suggesting Legal Tools to Limit CO₂ Emissions From New Coal-Fired Power Plants," available at http://www.ciel.org/Cli-mate/CO2_Foote_11May04.html (last visited Mar. 15, 2006).
48. *Id.*